

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

This only
RUDY VALENTINO LINAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

BRIEF OF APPELLEE.

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No. 13404

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BRIEF OF APPELLEE.

Statement of Jurisdiction.

This is an appeal from a judgment of conviction rendered against appellant in the United States District Court for the Southern District of California, Central Division, upon a finding of guilty, by the Court sitting without a jury, of violations of United States Code, Title 50, Appendix, Section 462. The Indictment is in one count charging (1) failure and refusal to be inducted into the Armed Forces of the United States as so notified and ordered to do.

The District Court had jurisdiction under United States Code, Title 18, Section 3231.

This Court has jurisdiction of the appeal under United States Code, Title 28, Section 1291.

Statement of the Case.

Appellant was indicted on April 2, 1952, under United States Code, Title 50, Appendix, Section 462, Selective Service Act, 1948, for refusing to submit to induction.

Appellant was convicted by the Court (Judge Ben Harrison) on April 28, 1952; he was sentenced by said judge to a three-year term of imprisonment on May 12, 1952, and is now in the Tucson, Arizona, Prison Camp.

The entire Selective Service file of the appellant was admitted in evidence in the case, as Government's Exhibit 1. On page 10, it reveals that in his Selective Service questionnaire, filed with the Board on or about the 14th day of March, 1949, the defendant did not claim to be a conscientious objector. The defendant was classified 1-A, in August, 1950 [p. 18]. He was ordered to report for Armed Forces physical examination on December 9, 1950; and on December 7, 1950, completed his special form for conscientious objectors, Form 150 [pp. 14-17]. He received a personal appearance on January 8, 1951 [Govt's Ex. 1, p. 49], and his classification of 1-A was continued. On February 14, 1951, the classification was affirmed before the appeal board [Govt's Ex. 1, p. 11]. This action was repeated on July 20, 1951 [Govt's Ex. 1, p. 11].

During the trial the attention of the Court was directed to page 49 of Government's Exhibit 1, which is the Minutes of the defendant's personal appearance before the Board on January 8, 1951.

In addition to this, the defendant's witness, Fred M. Lewis, who was a member of the Selective Service Appeal Board that classified and reconsidered the classification of the defendant, testified that at the time of the hearing and at the time of considering the defendant's application the Local Board reviewed everything that was in the file [pp. 14, 15, 16] and that at the time of the personal appearance they reviewed everything new in the file [p. 16], and this testimony is corroborated by the testimony of the defense witness Fred A. Wells, another member of the Board [Rep. Tr. p. 23].

In addition to this, the attention of the Court was directed towards the report of the Hearing Officer, appearing at pages 56 to 62 of Government's Exhibit 1.

The defendant testified that his recollection of the proceedings before the Hearing Officer was different in certain details from the statement of the facts contained in the Hearing Officer's Report. The statement of facts of the Hearing Officer being in evidence on pages 58 to 61 of Government's Exhibit 1. Motions to acquit made at the conclusion of Government's case and at the conclusion of all the testimony were denied.

ARGUMENT.

Summary.

1. The evidence in the record discloses that the appellant was classified on the record in the Selective Service file relevant to the question of his *own* religious training and belief.

2. The record in the case does not disclose that the Advisory Report of the Hearing Officer was either factually incorrect, or based on any considerations except matters relevant to the question of the appellant's *own* religious training and belief.

1. The Evidence in the Record Discloses That the Appellant Was Classified on the Record in the Selective Service File Relevant to the Question of His Own Religious Training and Belief.

The Government acquiesces in the proposition that the classification must be based on facts; that the facts used must be pertinent and must conform to established standards of fairness; and that the facts must be facts applicable to the question of the registrant's *own* religious training and belief.

There is nothing in the record to show that the Local Board based its classification in whole or in part on the question of the religion of the appellant's parents, or upon the fact that the Presbyterian and Seventh Day Adventist Churches do not adhere to conscientious objection to war as a part of their religious principles.

The questions asked of the appellant and his answers as summarized in the minutes of the Hearing [Govt's Ex. 1, p. 49] were pertinent to the questions presented

to the Board, particularly in light of the answers to the questions in the appellant's conscientious objector's form.

In this connection, it is noted that he did not answer whether or not he believed in a Supreme Being [Govt's Ex. 1, p. 4]. That he stated that no religious leaders guided him to his conclusion [Ex. 1, p. 15], and that he stated that he is not a member of a religious sect or organization [Ex 1, p. 16] and more particularly in light of the fact that when he first filled out his Selective Service Questionnaire he did not claim conscientious objection to war.

The testimony of the defense witnesses indicates clearly that at the time of the classification and at the time of the personal appearance of the appellant, the Selective Service Board considered *all* of the evidence which was before it.

The fact which is not a matter of record in this case, stated at page 60 (App. Br.), that certain Roman Catholics were classified as conscientious objectors in World War II would not be material if it were part of the record in this case since the appellant does not claim that he is a Catholic, or that his alleged conscientious objection to war arises from his training as a Catholic, and the same situation prevails as to the Presbyterian and Seventh Day Adventist Churches.

Niznik v. United States, 184 F. 2d 973, has no application to this case, since the appellant was not classified upon the basis of any group affiliation but upon the facts peculiarly applicable to him.

The statement made at line 20, page 8 of Appellant's Brief, that the Board Members did not "explain * * *

